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# This Fierce Spirit of Liberty

## THE MAKING OF THE BILL OF RIGHTS

An Exhibition
at the National Archives

June 1989 through December 1991

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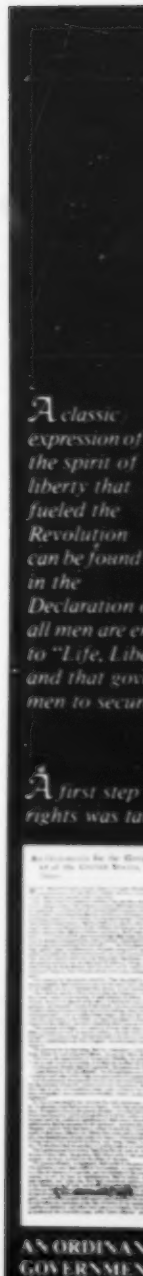
# INTRODUCTION

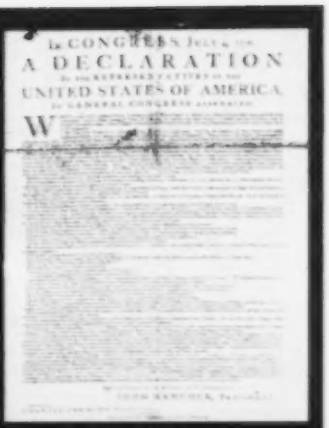
The spirit of liberty that fueled the American Revolution and guided the new nation finds its greatest expression in the Bill of Rights—the first 10 amendments to the Constitution. The Bill of Rights was first proposed on the floor of the House of Representatives in 1789; in 1791 the last of the requisite three-quarters of the states ratified the amendments, and they became part of the Constitution.

This exhibition celebrates the 200th anniversary of the creation of the Bill of Rights. The first half of the exhibition, NOTIONS OF LIBERTY, weaves together the ideas and events that formed an ideological foundation for the Bill of Rights. The second half of the exhibition, POLITICS OF LIBERTY, presents the political struggles and compromises out of which the Bill of Rights came into being.

*References to documents in Record Group 360, Records of the Continental and Confederation Congresses and the Constitutional Convention have been shortened as appropriate to "Records of the Continental Congress" or "Records of the Constitutional Convention."*






A DECLARATION
UNITED STATES OF AMERICA

**THE DECLARATION OF INDEPENDENCE printed by John Dunlap, July 4, 1776**
*National Archives*
*Record Group 360,*
*Papers of the Continental Congress*
*(Case 6 of the exhibition)*

*Independence, which states that*
*owed with "unalienable Rights"*
*y and the Pursuit of Happiness"*
*nments are instituted among*
*hese rights.*

*ward creating a federal bill of*
*n in 1787 in the Northwest*

*Ordinance, a framework of territorial government set up by the Confederation Congress. Reflecting the concern of delegates to protect individuals' liberties, the ordinance guaranteed freedom from slavery, freedom of religion, the right of habeas corpus, and the right to juried trials to Americans living in territories northwest of the Ohio River.*

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# NOTIONS OF LIBERTY

## Colonial Rights and Liberties

American colonists brought with them from England notions about the rights of man. One particularly influential concept was that man enjoyed natural and inalienable rights such as the right to have property and the right of free speech. Another was that government is formed by the consent of the governed—each person giving up some measure of his liberty for common security and protection. These ideas were present in the English systems of government and common law.

The early colonial governments guaranteed settlers the rights, privileges, and immunities enjoyed by all English citizens. But by the 1760s American colonists, resenting the taxes laid on them by Parliament, argued that the English government was violating their rights to be secure intheir property and to have a say in their own government. In the fall of 1774, when the First Continental Congress met in Philadelphia, the delegates drew up a list of rights and liberties to which they believed they were entitled. This is possibly the first time the title "Bill of Rights" was used by Americans.

## The Revolution

The decision to separate from England did not come easily; in the end, those who sided with the Revolution were those who felt that the English government was not sufficiently protecting them or their liberties. Many colonists felt ambivalent, however, and some fled to Canada and England, believing that their rights and liberties were better protected by the King of England than by revolutionaries.

Faced with rebellion in the colonies, Parliament in 1774 passed the Quartering Act, which allowed British troops to occupy private dwellings. The presence of troops, with its threat of physical oppression, was

**REPRESENTATION OF A COUNTY-CONVENTION FOR REDRESS OF GRIEVANCE OF COURTS by an unidentified artist, ca. 1787**
***Courtesy of the Library of Congress***
***(Case 9 of the exhibition)***

*Drawing from traditions of English law, most Americans believed that any individual accused of a crime—whether guilty or innocent—was entitled to certain rights, for example, the right to know the charges against him and the right to be tried by his peers. Four of the 10 amendments that make up the Bill of Rights were written expressly to protect rights of the accused within the court system.*

**INTERIOR OF A SYNAGOGUE by Bernard Picart, 1725**
***Courtesy of the National Museum of American History Smithsonian Institution***
***(Case 12 of the exhibition)***

*By 1787 there was a growing toleration for the variety of religious sects existing in America. The struggle for political liberty was closely related to the struggle for religious freedom. In a letter addressing the Constitutional Convention, however, Jonas Phillips complained that a Pennsylvania law discriminated against him, a Jew. He connected the idea of freedom of conscience to the idea of natural and inalienable rights that guided the Revolution.*

widely detested by Americans. While they accepted the necessity of quartering their own troops during war, Americans later expressed their fears about such actions in the third amendment of the federal Bill of Rights, which prohibited quartering of troops in times of peace.

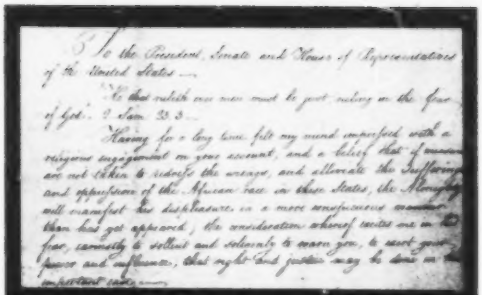
The first concerted effort to create a bill of rights took place in 1775 when the Virginia Convention prepared a new system of government for the state. The convention appointed a committee to write a declaration setting forth the fundamental rights that the laws in the state of Virginia would protect. George Mason drafted this notable document; James Madison served on the committee. At the end of the war, many states followed Virginia's lead and included bills of rights in their new state constitutions. At this time, individuals' rights were not protected by the central government but only by the various state constitutions.

## POLITICS OF LIBERTY

### The Constitutional Convention

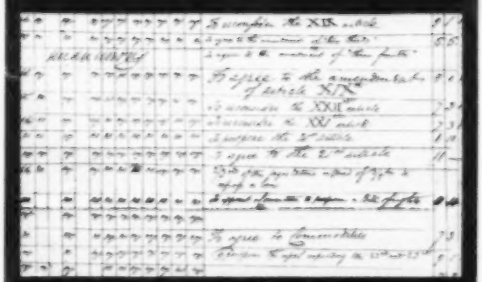
In 1787 delegates to the Constitutional Convention drafted the text that laid the groundwork for the United States government. Several delegates, including George Mason, feared that the centralization of power that would take place under the new Constitution would endanger the rights of the people, and so Mason made a motion to preface the Constitution with a bill of rights. After nearly 4 months of meeting and debating, however, the delegates were tired and ready to go home. The motion was rejected. Roger Sherman spoke for many when he said, "The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient."





**DETAIL OF PETITION OF WARNER MIFFLIN IN BEHALF OF THE AFRICAN RACE IN THESE STATES, addressed to the President, Senate, and House of Representatives, November 23, 1792**
*National Archives*
***Record Group 46, Records of the U.S. Senate***
***(Case 13 of the exhibition)***

*Ideals of liberty that swept through the nation inspired black Americans as well as white. However, for most white 18th-century Americans, notions of liberty did not extend to the slave population. Many Americans held firm to the conviction that slaves were property, and what was a man's property could not be taken from him. Some Americans, black and white, raised their voices against slavery and petitioned the new government with this fundamental question: How can a nation founded on the principle that all men are entitled to life and liberty permit slavery?*



**DETAIL OF VOTING RECORD OF THE CONVENTION: AYES, NOES, AND DIVIDED VOTES, showing the vote on the motion to appoint a committee to prepare a bill of rights**
*National Archives*
***Record Group 360, Records of the Constitutional Convention***
***(Case 15 of the exhibition)***

*Ten state delegations to the Constitutional Convention voted against preparing a bill of rights for the Constitution. Delegates from New York and Massachusetts did not vote; Rhode Island did not vote because it never sent delegates to the convention.*

## Ratification Debates

When the Constitution went out to the states for ratification, the lack of a bill of rights became a major stumbling block as people in the states looked for protections for their hard-won liberties in the new plan of government.

Those against ratification were loosely grouped together under the name Antifederalists. They feared the creation of a strong government and criticized the implied authority of the federal government over state governments and individuals' rights. The opposing political group, the Federalists, favored ratification. Responding to the demand for a bill of rights, they argued that individuals' rights were already protected at the state level. Ultimately, through persuasive pamphleteering, well-crafted arguments, and shrewd bargaining, the Federalists won out and 11 states ratified the Constitution. However, along with their ratifications, five states sent recommendations to amend the Constitution to protect individuals' rights. North Carolina's 1788 ratifying convention did not ratify the Constitution, but it proposed amendments anyway.

## Proposal for a Bill of Rights in Congress

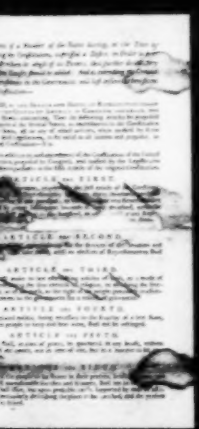
James Madison was the primary architect of the Bill of Rights as we know it. On June 8, 1789, he rose in the House of Representatives and said:

> It cannot be a secret to the gentlemen in this house, that, notwithstanding the ratification of this system of government . . . there is a great number of our constituents who are dissatisfied with it. . . . We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and expressly declare the great rights of mankind secured under this constitution.

Never having amended the Constitution

*THE DAILY ADVERTISER,* New York, January 3, 1788, containing "Federalist No. 31" by Publius
*Courtesy of the Library of Congress*
*(Case 18 of the exhibition)*

*...uggle to ...e Consti- ...as a war ...ritten ...umerous ...ppeared ... sides. ...er, ...n, James ..., and ... wrote a ... essays ...ng the ...ation ...he pen ... Publius. ... collectively as* The Federalist, *these essays ...s one of the fullest and most eloquent ...tions of constitutional government.*



...E ARTICLES OF ...DMENT, AS AGREED ... THE SENATE. ...ber 14, 1789, page 1 ...l Archives ... Group 46, ... of the U.S. Senate ... of the exhibition)

*When the Senate received the proposed bill of rights, it tightened up the language of the amendments, consolidating 17 articles into 12 and deleting what Madison felt was the most ...ant amendment, one that would have ...ted state governments from violating ...outlined in the federal Bill of Rights.*



before, members of Congress debated how to do it. Madison proposed nine amendments that he wanted incorporated directly into the body of the Constitution. Connecticut Representative Roger Sherman moved that the amendments be added to the end of the Constitution in a separate list.

Madison proposed only those amendments that reflected simple acknowledged principles of freedom. Politically astute, he tried to avoid amendments that were too controversial and would be subject to too much debate. There were men who felt that his amendments did not go far enough in protecting individuals' rights, and there were those who felt they went too far. The House transformed Madison's original list of nine amendments into 17 and finally reached agreement. The proposed amendments then went to the Senate, where they were consolidated into 12.

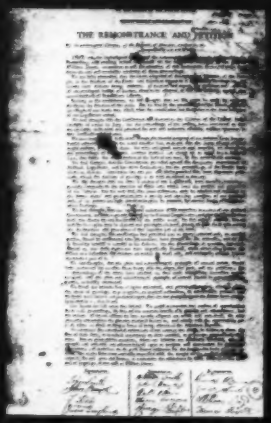
On October 2, 1789, these 12 amendments went to the states for ratification. The states ratified 10 of them, the ones now known as the Bill of Rights; on December 15, 1791, they became part of the United States Constitution. The two amendments not ratified by the states concerned the number of constituents per representative and the salary of members of Congress.

The meaning of the Bill of Rights has been subject to debate for the past 200 years. Today the Supreme Court plays an important role in deciding cases concerning individuals' rights. However, the role of the judiciary in interpreting the Bill of Rights has evolved slowly. It was not until 1833 that the Supreme Court made a decision involving the Bill of Rights, and it was not until well into the 20th century, with issues pertaining to civil rights, that the Supreme Court took the active role that it assumes today.

*Text prepared by Nancy E. Allyn, Consulting Curator of "This Fierce Spirit of Liberty: The Making of the Bill of Rights."*

**GEORGE MASON** by Dominic W. Boudet after John Hesselius, 1811
*Courtesy of the Virginia Museum of Fine Arts Gift of David K.E. Bruce (Cases 5 and 17 of the exhibition)*

**JAMES MADISON** by James Sharples, 1796–97
*Courtesy of the Independence National Historical Park Collection Philadelphia, Pennsylvania (Cases 11 and 18 of the exhibition)*



**REMONSTRANCE AND PETITION FROM PHILADELPHIA CITIZENS** concerning contempt proceedings against William Duane, page 1, read in the Senate on May 10 and 14, 1800
*National Archives Record Group 46, Records of the U.S. Senate (Case 26 of the exhibition)*

*In 1798 the Federalist-dominated Congress passed the Sedition Act, which was used to silence many prominent printers, including Philadelphian William Duane. Outraged citizens sent numerous petitions to Congress denouncing the Sedition Act as a violation of the first amendment right to free speech. No court ruled on the constitutionality of the Sedition Act; however, people expressed their discontent not only in petitions but also in the elections of 1800, which swept Federalists from power. The Sedition Act was allowed to expire in 1800.*



# The Bill of Rights

### AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

### AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

### AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

### AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

### AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.